

## Part 1

### Territorial Integrity for Electric Suppliers

**69-5-101. Short title.** This part is known and may be cited as the "Territorial Integrity Act".

History: En. Sec. 1, Ch. 7, L. 1971; R.C.M. 1947, 70-501; amd. Sec. 34, Ch. 505, L. 1997.

**69-5-102. Definitions.** When used in this part, the following definitions apply:

(1) "Agreement" means a written agreement between two or more electric facilities providers that identifies the geographical area to be served exclusively by each electric facilities provider that is a party to the agreement and any terms and conditions pertinent to the agreement.

(2) "Electric cooperative" means a rural electric cooperative organized under Title 35, chapter 18, or a foreign corporation admitted thereunder to do business in Montana.

(3) "Electric facilities provider" means any utility that provides electric service facilities to the public.

(4) "Electric service facilities" means any distribution or transmission system or related facility necessary to provide electricity to the premises, including lines.

(5) "Electric utility" means a person, firm, or corporation other than an electric cooperative that provides electric service facilities to the public.

(6) "Line" means any electric supply conductor.

(7) "Premises" means a building, residence, structure, or facility to which electric service facilities are provided or are to be installed; however, two or more buildings, structures, or facilities that are located on one tract or contiguous tracts of land and that are used by one electric consumer for farming, business, commercial, industrial, institutional, governmental, or trailer court purposes must together constitute one premises, except that any building, structure, or facility, other than a trailer court, may not, together with any other building, structure, or facility, constitute one premises if the electric service to it is separately metered and the charges for that service are calculated independently of charges for service to any other building, structure, or facility.

(8) "Utility" means a public utility regulated by the commission pursuant to Title 69, chapter 3, or a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18.

History: En. Sec. 2, Ch. 7, L. 1971; amd. Sec. 1, Ch. 68, L. 1975; R.C.M. 1947, 70-502; amd. Sec. 35, Ch. 505, L. 1997.

#### Cross-References

Rural electric and telephone cooperatives defined, 35-18-102.

**69-5-103. Repealed.** Sec. 46, Ch. 505, L. 1997.

History: En. Sec. 3, Ch. 7, L. 1971; R.C.M. 1947, 70-503(part).

**69-5-104. Continuation of electric service facilities to existing consumers.** Each electric service facilities provider has the right to provide electric service facilities to all premises being served by it or to which any of its facilities are attached on May 2, 1997.

History: En. Sec. 3, Ch. 7, L. 1971; R.C.M. 1947, 70-503(1); amd. Sec. 36, Ch. 505, L. 1997.

**69-5-105. Service to new consumers.** (1) Subject to this part, the electric facilities provider having a line nearest the premises, as measured in accordance with subsection (2), shall provide electric service facilities to the premises initially requiring service after May 2, 1997, which creates a rebuttable presumption that the nearest line is the least-cost electric service facility to the new customer. However, a

customer or another electric facilities provider may rebut the presumption, and another electric facilities provider may provide the electric service facilities if it can do so at less cost.

(2) All measurements under this part must be made on the shortest straight line that can be drawn from the conductor nearest the premises to the nearest permanent portion of the premises.

(3) If the electric facilities providers are unable to reach agreement as to which electric facilities provider can provide electric service facilities at least cost, an independent consultant engineer agreeable to both electric facilities providers or, in the event of failure of the electric facilities providers to agree on a consultant engineer, an independent consultant engineer selected by the district court having jurisdiction, as provided in 69-5-110, shall determine which electric facilities provider can extend its lines to the consumer at the least cost. The cost of those engineering services must be paid equally by the electric facilities providers involved.

History: En. Sec. 3, Ch. 7, L. 1971; R.C.M. 1947, 70-503(2); amd. Sec. 37, Ch. 505, L. 1997.

**69-5-106. Electric service facilities to large customers.** (1) An electric utility has the right to furnish electric service facilities to any premises if the estimated connected load for full operation at the premises will be 400 kilowatts or larger within 2 years from the date of initial service and if the electric utility can extend its facilities to the premises at less cost to the electric utility than the electric cooperative cost. The estimated connected load must be determined from the plans and specifications prepared for construction of the premises or, if an estimate is not available, must be determined by agreement of the electric facilities provider and the customer. The fact that the actual connected load after 2 years from the date of initial service is less than 400 kilowatts does not affect the right of the electric facilities provider initially providing electric service facilities to continue to provide electric service facilities to the premises.

(2) An independent consultant engineer agreeable to both electric facilities providers or, in the event of failure of the electric facilities providers to agree on a consultant engineer, an independent consultant engineer selected by the district court having jurisdiction, as provided in 69-5-110, shall determine which electric facilities provider can extend its facilities at the least cost to the utility. The cost of those engineering services must be paid equally by the electric facilities providers involved.

History: En. Sec. 3, Ch. 7, L. 1971; R.C.M. 1947, 70-503(3); amd. Sec. 12, Ch. 43, L. 1979; amd. Sec. 38, Ch. 505, L. 1997.

**69-5-107. Customer-owned facilities.** This part may not limit a customer's right to construct, own, or operate electric service facilities for the customer's own use, and construction, ownership, or use may not cause the customer to be considered a utility. A customer may not duplicate existing electric service facilities.

History: En. Sec. 3, Ch. 7, L. 1971; R.C.M. 1947, 70-503(4); amd. Sec. 39, Ch. 505, L. 1997.

**69-5-108. Agreements between electric facilities providers.** Utilities may enter into agreements that identify the geographical area to be exclusively served by each electric facilities provider that is party to the agreement, overriding the provisions of 69-5-105 and 69-5-107. If an agreement is approved by the commission pursuant to this part, the agreement is valid and binding on all electric facilities providers and all customers, except those provided for in 69-5-106.

History: En. Sec. 4, Ch. 7, L. 1971; R.C.M. 1947, 70-504; amd. Sec. 1, Ch. 167, L. 1995; amd. Sec. 40, Ch. 505, L. 1997.

**69-5-109. Special provisions for annexed areas.** (1) Electric facilities providers providing electric service facilities in or near areas that are incorporated municipalities having a population in

excess of 3,500 persons and having annexed areas since 1985 or having existing municipal planning zones on May 2, 1997, shall enter into agreements dividing the annexed and planning zone areas into exclusive service territories and shall submit the agreements to the commission for approval, pursuant to this part.

(2) The agreements do not apply to electric service facilities with loads of 400 kilowatts or greater. Agreements must be based on the location of facilities in place on May 2, 1997.

(3) If electric facilities providers have failed to negotiate agreements within 1 year from May 2, 1997, the commission shall divide the annexed and planning zone areas into exclusive service territories, using the considerations pursuant to 69-5-112.

(4) Until agreements are final, electric service facilities to new customers will be provided pursuant to 69-5-105.

History: En. Sec. 5, Ch. 7, L. 1971; R.C.M. 1947, 70-505; amd. Sec. 13, Ch. 43, L. 1979; amd. Sec. 41, Ch. 505, L. 1997.

### Cross-References

Annexation, Title 7, ch. 2, parts 42 through 47.

**69-5-110. Jurisdiction of district courts over disputes.** The district courts of the county or counties within which the premises or lines involved in any dispute are located have jurisdiction under this part over all electric facilities providers subject to this part.

History: En. Sec. 6, Ch. 7, L. 1971; R.C.M. 1947, 70-506; amd. Sec. 42, Ch. 505, L. 1997.

**69-5-111. Judicial remedies.** (1) Whenever an electric facilities provider is failing or omitting or about to fail or omit to do anything required of it by this part or is doing or is about to do anything or to permit anything to be done contrary to or in violation of this part, the electric facilities provider affected may file a complaint in the district court setting forth the acts or omissions complained of and requesting an injunction.

(2) If an affidavit showing that grounds exist that an electric facilities provider is in violation of this part is filed with the complaint, a temporary restraining order must be issued without notice. A copy of the temporary restraining order, complaint, and affidavit must be served upon the defendant, together with an order to show cause why the temporary restraining order should not be made permanent, within 5 days after issuance of the temporary restraining order. The hearing on the order to show cause must be held at a date specified in the order and may not be more than 10 days after service of the order and must take precedence over all matters pending before the district court. A judgment making the injunction permanent or dissolving the temporary restraining order that was issued and dismissing the complaint must be made before 10 days after the hearing on the order to show cause.

(3) Any party aggrieved by the order may appeal to the supreme court of Montana by filing a notice of appeal in the district court within 20 days from entry of the order. The appeal must be perfected within 20 days after filing the notice of appeal and must take precedence over all matters pending before the supreme court of Montana.

History: En. Sec. 7, Ch. 7, L. 1971; R.C.M. 1947, 70-507; amd. Sec. 43, Ch. 505, L. 1997.

### Cross-References

Notice of appeal, Rule 4, M.R.App.P. (see Title 25, ch. 21).

Affidavits, Title 26, ch. 1, part 10.

Preliminary injunctions, Title 27, ch. 19, parts 2 through 4.

**69-5-112. Commission jurisdiction over agreements.** (1) All agreements between electric facilities providers must be submitted to the commission for approval. Each agreement must clearly identify the geographical area to be served by each electric facilities provider. The submission must include:

- (a) a map and a written description of the area; and
  - (b) the terms and conditions pertaining to the implementation of the agreement.
- (2) Whenever an agreement involves the exchange or transfer of customers within service territories, the following must also be included with the agreement submission:
- (a) the number and class of customers to be transferred;
  - (b) assurance that the affected customers have been contacted and have received a written explanation of the difference in rates; and
  - (c) information with respect to the degree of acceptance by affected customers, such as the number in favor of and those opposed to the transfer.
- (3) In approving agreements, the commission shall consider but is not limited to consideration of:
- (a) the reasonable likelihood that the agreement, in and of itself, will not cause a decrease in the reliability of electric service to the existing or future ratepayers of any electric facilities provider party of the agreement; and
  - (b) the reasonable likelihood that the agreement will eliminate existing or potentially uneconomic duplication of electric service facilities.
- (4) An agreement approved by the commission is valid and enforceable, and except as provided in 69-5-106, an electric facilities provider may not offer, construct, or extend electric service facilities into an exclusive territory.
- (5) The commission shall state its findings and conclusions for approving or disapproving an agreement and shall render a decision within 90 days of receipt of the agreement. The electric facilities providers submitting the agreement to the commission shall act according to the agreement until a decision is rendered.
- (6) Upon approval of the agreement, any modification, changes, or corrections to this agreement must be approved by the commission.
- (7) The commission may promulgate rules to administer this part consistent with the requirements of this part.

History: En. Sec. 44, Ch. 505, L. 1997.

#### **Cross-References**

Adoption and Publication of Rules, Title 2, ch. 4, part 3.

General powers and rulemaking authority of Commission, 69-3-103.